

BOMBAY ACT No. VII OF 1879.¹

[THE BOMBAY IRRIGATION ACT, 1879.]

[2nd October 1879]

Repealed in part by Act 16 of 1895 ;
 " " " " Bom. 3 of 1880 ;
 " " " " " 3 of 1886 ;
 Amended by Bom. 1 of 1910 ;
 " " " 2 of 1914 ;
 " " " 14 of 1931 ;
 " " " 15 of 1933 ;
 Adapted and modified by the Adaptation of Indian Laws Order in Council ;
 Amended by Bom. 13 of 1947 ;
 " " " 64 of 1948 ;
 Adapted and modified by the Adaptation of Laws Order, 1950 ;
 Amended by Bom. 59 of 1950 ;
 " " " 29 of 1951 ;
 " " " 56 of 1954 ;

An Act to provide for Irrigation in the Bombay Presidency.

WHEREAS it is necessary to make provision for the construction, maintenance Preamble.
 and regulation of canals, for the supply of water therefrom and for the levy of rates
 for water so supplied, in the Bombay Presidency ; It is enacted as follows :—

PART I.

PRELIMINARY.

1. This Act may be called the Bombay Irrigation Act, 1879.

Short title.

It extends to the whole of the Presidency of Bombay, except the City of Bombay. Local extent.

2. [The amendments made by s. 2 of this Act have been incorporated in the Bombay Land Revenue Code, 1875].

3. In this Act, unless there be something repugnant in the subject or context,— Interpretation clause.
 (1) " canal " includes—

- (a) all canals, channels, pipes and reservoirs constructed, maintained or controlled by ²[any Government] for the supply or storage of water ;
- (b) all works, embankments, structures and supply and escape-channels connected with such canals, channels, pipes or reservoirs, and all roads constructed for the purpose of facilitating the construction or maintenance of such canals, channels, pipes or reservoirs ;

¹ For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1878, Pt. V, p. 126 ; for Report of the Select Committee, see *ibid.*, 1879, Pt. V, p. 83 ; and for Proceedings in Council see *ibid.*, 1879, Pt. V, pp 8, 115 and 151.

² The words " any Government " were substituted for the word " Government " by the Adaptation of Indian Laws Order in Council.

- (c) all water-courses, drainage-works and flood embankments as hereinafter respectively defined ;
- (d) any part of a river, stream, lake, natural collection of water or natural drainage-channel, to which the ¹[²State] Government] may apply the provisions of section 5, or of which the water has been applied or used before the passing of this Act for the purpose of any existing canal ;
- (e) all land belonging to ³[the ⁴Government] which is situate on a bank of any canal as hereinbefore defined, and which has been appropriated under the orders of ⁵[any Government] for the purposes of such canal ;
- (2) " water-course " means any channel or pipe not maintained at the cost of ⁶[the ²State] Government], which is supplied with water from a canal, and includes all subsidiary works connected with any such channel or pipe, except the sluice or outlet through which water is supplied from a canal to such channel or pipe ;
- (3) " drainage-work " means any work in connection with a system of irrigation or reclamation made or improved by ⁷[any Government] for the purpose of the drainage of the country, whether under the provisions of section 15 or otherwise, and includes escape-channels from a canal, dams, weirs, embankments, sluices, groins and other works connected therewith, but does not include works for the removal of sewage from towns ;
- (4) " flood-embankment " means any embankment constructed or maintained by ⁵[any Government] in connection with any system of irrigation or reclamation works for the protection of lands from inundation or which may be declared by the ¹[²State] Government] to be maintained in connection with any such system, and includes all groins, spurs, dams and other protective works connected with such embankments ;
- ⁸[(4A) " bandhara " means any structure permanent or otherwise constructed or maintained for the purpose of impounding or diverting water of any river, stream, lake or any natural collection of water and includes any weirs, sluices, head walls, groins or any other works connected with such bandhara ;]
- (5) " Collector " * * * includes any officer appointed by the ¹[²State] Government] to exercise all or any of the powers of a Collector under this Act ;
- (6) " Canal-officer " means any officer lawfully appointed or invested with powers under section 4 ;
- ¹⁰[(6A) " Lands under irrigable command of a canal " means such lands as are irrigated or capable of being irrigated from the canal, being under its command and shall include also such lands as are or shall be deemed to be irrigated within the meaning of section 48 ;]
- (7) " owner " includes every person having a joint interest in the ownership of the thing specified ; and all rights and obligations which attach to an owner

¹ The words " Provincial Government " were substituted for the words " Governor in Council " by the Adaptation of Indian Laws Order in Council.

² This word was substituted for the word " Provincial " by the Adaptation of Laws Order, 1950.

³ The words " the Crown " were substituted for the word " Government ", by the Adaptation of Indian Laws Order in Council.

⁴ This word was substituted for the word " Crown " by the Adaptation of Laws Order, 1950.

⁵ The words " any Government " were substituted for the word " Government " by the Adaptation of the Indian Laws Order in Council.

⁶ The words " the Provincial Government " were substituted for the word " Government ", *ibid.*

⁷ The words " any Government " were substituted for the words " the Government ", *ibid.*

⁸ This clause was inserted by Bom. 29 of 1951, s. 2.

⁹ the words " means the head revenue-officer of a district and " were repealed by the Bombay General Clauses Act, 1886 (Bom. 3 of 1886), schedule B. This schedule is printed as an Appendix to the Bombay General Clauses Act, 1904 (Bom. 1 of 1904).

¹⁰ Clause (6A) was inserted by Bom. 59 of 1950, s. 2.

56A. The betterment charges shall be payable on the date fixed under the rules made by the State Government under section 70 : Payment of betterment charges.

Provided that the owner of the land on which such charges are imposed may execute an agreement in favour of the State Government agreeing to pay the amount of such charges by annual instalments together with interest at such rate and within such period as may be prescribed by rules.

56B. Notwithstanding anything contained in section 56A, the State Government may allow the owner of the land on which the betterment charges may be payable to relinquish the whole or any part of the land or to deliver it in exchange in favour of the State Government on such conditions as may be prescribed by rules : Relinquishment or exchange of land in lieu of the payment of betterment charges.

Provided that no such relinquishment or exchange shall be permitted unless the land is free from encumbrances.

Irrigation cess.

56C. In addition to the water rates or other charges leviable under the provisions of this Act, there shall be levied in respect of land under irrigable command of a canal, a cess called 'the irrigation cess'. Levy of Irrigation cess.

56D. (1) In the case of unalienated land the occupant, and in the case of alienated land, the superior holder shall be primarily liable to the State Government for the payment of the irrigation cess, inclusive of all arrears of such cess : Liability for irrigation cess.

¹[Provided that in the case of land in the possession of a tenant such tenant shall, notwithstanding anything contained in the Bombay Tenancy and Agricultural Lands Act, 1948, or any other law, be primarily liable to pay the irrigation cess.] Bom. LXVII of 1948.

(2) In the case of default by any person who is primarily liable under this section, the irrigation cess including all arrears as aforesaid, shall be recoverable—

²[(a) from the occupant or superior holder, as the case may be, where the tenant was primarily liable, and

(b) in any other case, from any other person in possession of the land :]

Provided that where the irrigation cess is recovered under this section from a person who is not primarily liable for the same, such person shall be allowed credit for any payments which he may have duly made to the person who is primarily liable, and shall be entitled to credit, for the amount recovered from him, in account with the person who is primarily liable.

56E. (1) The irrigation cess payable in respect of any land under the irrigable command of a canal shall be at such rates and for such period as may be fixed by the State Government by notification in the *Official Gazette*. Rate and period of irrigation cess.

¹ This proviso was inserted by Bom. 56 of 1954, s. 2 (1).

² This portion was substituted for the words "from any person in possession of the land:", *ibid.*, s. 2(2).

(2) The determination of such rates and period shall be final and shall not be questioned in any court of law :

Provided that no increase shall be made during such period in the rates so fixed.

Date for
payment of
irrigation
cess.

56F. The irrigation cess recoverable in respect of any land shall be leviable on the date on which the land revenue is leviable in respect thereof.]

Recovery of Water-rates and other Dues in Arrears.

Payment and
recovery of
water rate
and other
dues.

¹[57. (1) Every water rate leviable or charged under this Act shall be payable in such instalments and on such dates and to such officers as shall from time to time be determined under the orders of the ²[State] Government. * * * *]

(2) Any such rate or the instalment thereof which is not paid on the date when it becomes due shall be deemed an arrear of land revenue due on account of the land for the use of which canal water was supplied or which was benefited by percolation or leakage from any canal and shall be recoverable as such arrear by any of the methods specified in section 150 of the Bombay Land Revenue Code, 1879, including the forfeiture of the said land.

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⁴[The amount of the betterment charges or any of its instalments together with interest thereon, if not paid on the date specified in section 56A and the amount of the irrigation cess if not paid on the date specified in section 56F shall be deemed to be an arrear of land revenue due on account of the land in respect of which it is payable and shall also be recoverable as such arrear by any of the methods specified in section 150 of the Bombay Land Revenue Code, 1879, including the forfeiture of the said land.]

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(3) Any rent payable to the owner of a water-course by a person authorized to use such water-course may be paid in such instalments and on such dates as the Canal officer duly empowered to act under section 23 shall direct and no more of such rent shall at any time be payable to the owner thereof than is actually recovered from the person liable to pay.

(4) (a) Any other sum due to the ²[State] Government or to a Canal-officer under the provisions of this Act whether on behalf of the ²[State] Government or any other person under Part III of this Act which is not paid when demanded shall, and

(b) any rent or instalment thereof payable to the owner of a water-course, which is not paid when it becomes due may, on behalf of the owner,

be recoverable as arrears of land revenue in accordance with the provisions on the Bombay Land Revenue Code, 1879.]

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¹ Section 57 was substituted by Bom. 64 of 1948, s. 2.

² This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

³ The words "or of any Commissioner empowered by the Provincial Government in this behalf" were deleted by Bom. 28 of 1950, Sch.

⁴ This paragraph was added by Bom. 59 of 1950, s. 5.